

Exhibit 5

Declaration of Emily Cross

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
HELENA DIVISION

BOB BROWN; HAILEY SINOFF;
and DONALD SEIFERT,

Plaintiffs,

vs.

CHRISTI JACOBSEN, in her
official capacity as Montana
Secretary of State,

Defendant.

Cause No.
6:21-cv-92-PJW-DWM-BMM

**Declaration of
Emily J. Cross**

I, Emily J. Cross, declare as follows:

1. I am over 18 years old and a resident of Billings, Montana. The matters set forth in this Affidavit are based upon my personal knowledge.
2. I received a J.D. from the University of California, Irvine School of Law in 2016, graduating *cum laude*. I served on the *UC Irvine Law Review* and the Student Bar Association, and I was an extern to the Honorable Stephen Reinhardt during his tenure on the Ninth Circuit Court of Appeals. I briefed and argued a case before the Ninth Circuit Court of Appeals in 2015 as part of my law school clinic.
3. After graduating from law school and passing the California bar exam, I clerked for the Honorable Sidney R. Thomas, then Chief Judge of the Ninth Circuit Court of Appeals, from August 2016 to August 2017.
4. I was admitted to the California bar on December 3, 2016 and the Montana bar on April 30, 2019. I am also admitted to practice before the United States District Court for the District of Montana and the United States Court of Appeals for the Ninth Circuit.

5. I currently am employed as an Associate Attorney at Holland & Hart LLP in Billings, Montana. Prior taking my current position, I was employed as an Associate Attorney at Milbank LLP in Los Angeles, California.

6. My current hourly rate, regularly billed to my clients, is \$290. This rate reflects my years of practice, my educational background, and my experience as a federal appellate law clerk. When I started working at Holland & Hart LLP in May 2019, my standard hourly rate was \$220. My hourly rate has increased on an annual basis at approximately \$35 per year.

7. I am familiar with the backgrounds and credentials of attorneys Rylee Sommers-Flanagan and Constance Van Kley. Sommers-Flanagan and I graduated from law school the same year and clerked for the same judge on the Ninth Circuit Court of Appeals. Van Kley graduated one year later and also clerked for the same judge. In my opinion, Sommers-Flanagan and Van Kley are well-qualified and capable attorneys with backgrounds and credentials substantially similar to my own.

8. In my opinion, if Sommers-Flanagan and Van Kley directly billed clients for their work, both could charge rates commensurate with my regular rate of \$290. Thus, in my opinion, Sommers-Flanagan's requested rate of \$285/hour and Van Kley's requested rate of \$275/hour are reasonable and appropriate. The difference between these two rates is justified by Sommers-Flanagan's additional year of experience.

9. I have reviewed Sommers-Flanagan's and Van Kley's daily time records for work performed in the above-captioned case. In my opinion, both attorneys have exercised sound billing judgment.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of March, 2022.



Emily Cross